IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 29436 of 2007(D)

PETITIONER:

N.K.AHAMEDKUTTY, S/O KHADERKUTTY,
AGED 53 YEARS, AR MAHAL, ERAMALLOOR, CHERTHALA,
ALAPPUZHA.

BY ADV. SRI.N.RATHEESH,
SRI.RENI KOMATH BHASKARAN.

RESPONDENTS:
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1. **CORPORATION BANK,**
   EZHUPUNNA BRANCH, SANJO BUILDING, ERAMALLUR P.O.,
   CHERTHALA, ALAPPUZHA, REPRESENTED BY ITS
   BRANCH MANAGER.

2. **THE RECOVERY OFFICER,**
   DEBT RECOVERY TRIBUNAL,
   KERALA AT ERNAKULAM.

BY ADV. SRI.P.JACOB VARGHESE,SC, CORPN. BANK, FOR R1,
GOVT. PLEADER SMT. ANU SIVARAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.29436 of 2007-D

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Dated this the 22nd day of November, 2007.

JUDGMENT

1.I have heard the learned counsel for the petitioner and the learned counsel for the bank quite in extenso on the merits of the recovery and also on the entitlement of the petitioner for any relief, having regard to the compromise settlement that was arrived at between the parties, as evidenced by Ext.P3 dated 7-7-2006.

2.The transactions between the parties with reference to Ext.P3, may become relevant because, the petitioner appears to have satisfied the conditions imposed by this Court as per the interim orders in this case and has paid amounts to avert the sale. Therefore, I am inclined to take the view that the petitioner has a bonafide interest in saving the property from being sold

in public auction.

3.From Ext.P3, it can be seen that the petitioner offered an amount of Rs.15 lakhs on 30-6-2006 as a full and final settlement. That was accepted by the bank on terms contained in Ext.P3 which, obviously, failed. Therefore, the petitioner cannot contend that the bank has to accept a total amount of Rs.15 lakhs in full and final settlement, as of now. Ends of justice would stand satisfied, if the amount of Rs.15 lakhs as on 30-6-2006 with accruing interest at PLR rate as applicable to the bank, is paid.

4.In the result, this writ petition is disposed of directing that if the petitioner pays the entire remaining outstandings with interest by applying the PLR rate as applicable, to the amount of Rs.15 lakhs as on 30-6-2006 and adding on to that, the entire expenditure incurred by the bank by way of advertisement or otherwise, including before the

Debts Recovery Tribunal, after setting off the amounts already paid in terms of the interim orders or otherwise, on or before the 15th of December, 2007, the impugned distress action will be dropped. This shall be on further condition that an amount of Rs.5 lakhs, out of the above, is paid on or before the 5th of December, 2007, without fail. If there is default in paying any of the instalments as aforesaid, the benefits of this judgment shall stand recalled automatically and the respondents will be at liberty to proceed with the impugned distress action, without further notice to the petitioner.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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